

## **REMARKS**

### Rejection of the Claims

Claims 1-28 are pending and claims 29 and 30 are added by this amendment. Claims 1, 3, 22, and 25 are amended in this response. Claim 21 is also amended to correct a minor typographical error.

Claims 1-4, 15-17, 19, and 22 have been rejected under 35 U.S.C. 102(e) as based on United States Patent Application Publication 2002/0104855 (DeGroot). Claims 1-4, 15, 16, 18-23, 25, and 26 have been rejected under 35 U.S.C. 103(a) based on United States Patent Number 4,801,054 (Nycz) in view of United States Patent Number 4,795,043 (Odet). Claim 24 has been rejected under 35 U.S.C. 103(a) based on the above and further in view of United States Patent Number 5,887,738 (Bietzer). Claims 7-14 has been rejected under 35 U.S.C. 103(a) based on the above and further in view of 5,094,361 (Dubach). Claim 17 has been rejected under 35 U.S.C. 103(a) based on the above and further in view of United States Patent Number 4,854,473 (Dubach). Claims 8-14, 18, and 20 have been rejected under 35 U.S.C. 103(a) based on DeGroot.

Claims 5, 6, 27, and 28 have been objected to as being dependent on a rejected claim, but allowable if written in independent form.

Applicant respectfully request reconsideration of the rejections considering the following.

Claim 1 is amended to recite that the closure comprises a “spud extending downwardly from the lid member substantially within the spout cover and spaced apart therefrom, an exterior surface of the spud contacting an interior surface of the spout while the closure is in the closed position,” as previously recited in claim 3. Independent claim 22 is similarly amended.

DeGroot discloses an embodiment in which an “orifice sealing member” enters into a “dispensing orifice” and another embodiment in which an “orifice sealing member” engages “an outer surface of the spout.” (*Compare* DeGroot at column 5, paragraph 0060 disclosing a

cover where an “orifice sealing member 260 is provided with an angled end surface 266 which accommodates entry of the orifice sealing member 260 into the angled dispensing orifice 252 when the lid 250 closes” *with* DeGroot at column 5, paragraph 0061 disclosing a cover where an “orifice sealing member 360 . . . is adapted to engage an outer surface of the spout 338.”). In contrast to the structure recited in Applicant’s claims, DeGroot does not teach or suggest a cover comprising both a “spout cover” and a “spud” disposed substantially within the “spout cover,” nor even a spud (as recited in Applicants’ claims) at all. Applicant requests reconsideration of the Section 102 rejections based on DeGroot.

Claim 1 has also been rejected based on Nycz in view of Odet. Applicant’s prior response provided arguments against the combination of Nycz and Odet, including that the perimeter of an elongated orifice is inherently more difficult to seal than is a circular orifice (*See* Amendment and Response, November 6, 2002, pages 2-3). The office action states that “wherein an elongated orifice may be inherently ‘more difficult’ to seal than a circular spout, it is not impossible to seal an elongated spout (as evidenced by the instant application).” (Office action, para. 12).

Applicant submits that there is not only no motivation to combine Nycz and Odet, but a person skilled in the art would have a disincentive to modify Nycz by elongating the spout because to do so would increase the spout’s perimeter, which would be detrimental to an object of Nycz: water-tightness. For determining obviousness, it is not enough that sealing an elongated spout would be possible, but rather a motivation to combine Nycz and Odet is required. Rather than a motivation for such a combination, Nycz provides an inherent disincentive to employing an elongated spout. Moreover, Applicant’s own technical solution to sealing an elongated orifice can not be used as an example of the feasibility or desirability of modifying the Nycz reference. Applicants request reconsideration of Section 103 rejections based on the lack of incentive to combine Nycz and Odet.

Applicants submit new claims 29 and 30, which depend from claims 3 and 25, respectively, that recite structure relating to the “spout cover” and “spud” that is neither taught nor suggested in Nycz or other art on which the rejections are based. According to claim 29, “the spout cover has a height . . . that is greater than a height of the spud.” Thus, “a distal edge of the spout cover extends below a distal tip of the spud while the closure is in its closed position.” Also, as recited in claim 1, “the spud extend[s] downwardly from the lid

member substantially within the spout cover and spaced apart therefrom.” Accordingly, claim 29 states that the spud is “within the spout” and the “spout cover has a height greater than” that of “the spud.”

In contrast, Nycz discloses a “spout 32” inside of which an “inner sealing fin 40” is disposed. An “outer sealing fin 42” engages an outer portion of “spout 32”. Even if “inner sealing fin 40” could be construed to disclose Applicant’s claimed *spud* and “outer sealing fin 42” could be construed to disclose Applicant’s claimed *spout cover*, claims 29 and 30 are patentably distinguishable over the cited art. For example, the structure of Nycz purported to be the *spout cover* (that is, outer sealing fin 42), *is shorter than* the structure purported to be the *spud* (that is, inner sealing fin 40), rather than having a height greater than the spud, as required in claim 29. Claim 30 is patentable for analogous reasons.

Drawing Objection

Applicant cancels claim 20, which recited the term “elliptical,” as an elliptical spout is covered by claims 1 and 22. Accordingly, the drawing objection relating to an elliptical spout is obviated. Applicant is filing, under separate cover, an improved version of the drawings.

Notice of Related Application

Applicant hereby notifies the Examiner of a co-pending United States Patent Application Number 10/068,714 (attorney docket number CC-3404), filed February 6, 2002, which relates to subject matter that may be considered similar to that of the present invention. Applicant is filing an Information Disclosure Statement, under separate cover, disclosing prior art and the first office action in that case.

**DOCKET NO.:** CC-3052  
**Application No.:** 09/780,760  
**Office Action Dated:** January 29, 2003

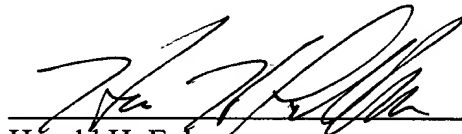
**PATENT**

### **CONCLUSION**

For the forgoing reasons, Applicant respectfully submits that the present application is in condition for allowance. Reconsideration of the office action and notice of allowance are respectfully requested.

If the examiner determines that a telephone conference would further prosecution of this case, she is invited to telephone the undersigned at her convenience.

Date: July 25, 2003

  
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